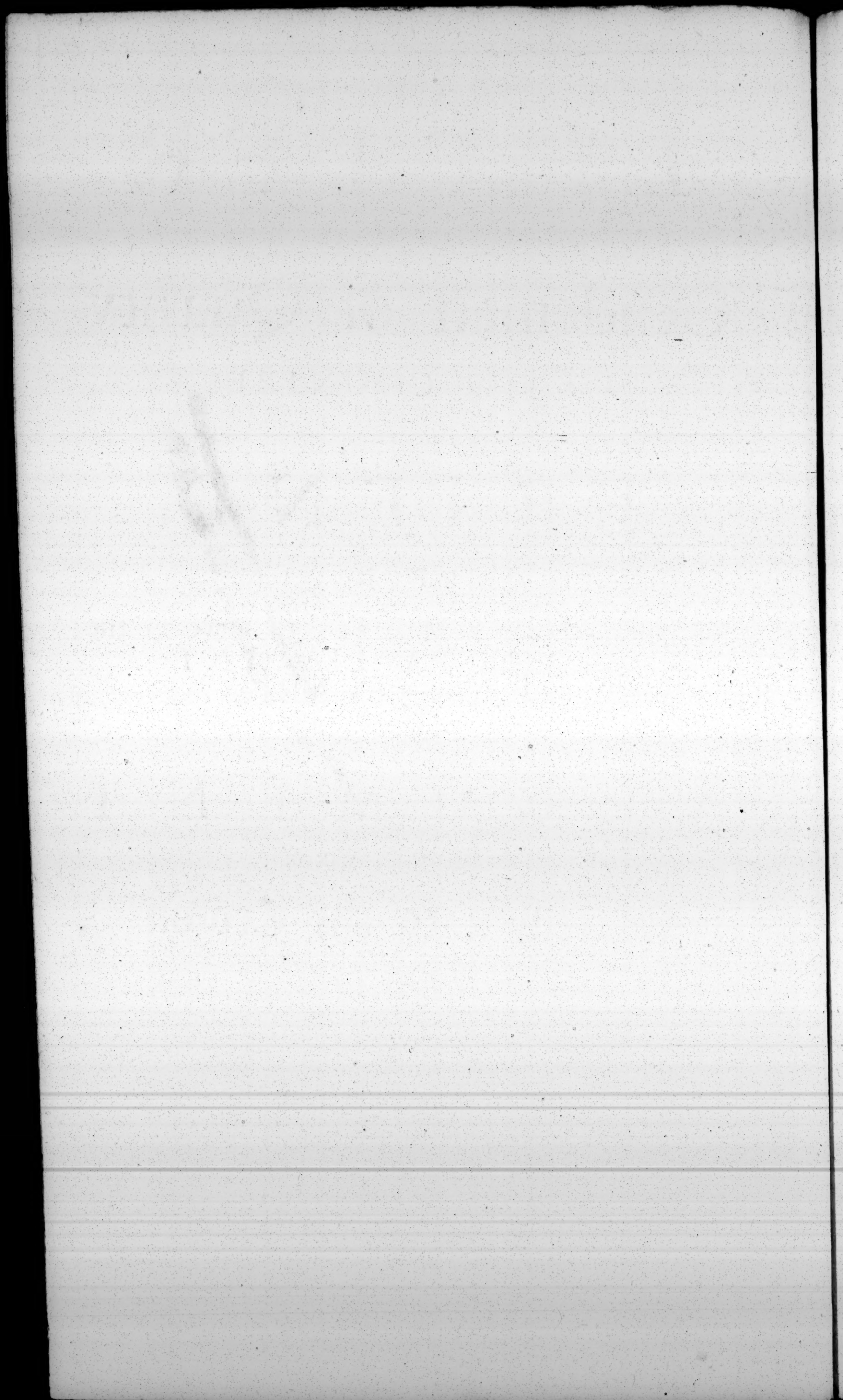


A
LETTER
 FROM A
 Gentleman of Quality
 IN THE COUNTRY,
 TO HIS
FRIEND,
 UPON
 His being Chosen a MEMBER to serve in the
 Approaching PARLIAMENT,
 and desiring his Advice.
 BEING AN
ARGUMENT
 Relating to the Point of
Succession to the Crown.

SHEWING
 From *Scripture, Law, History, and Reason*, how
 Improbable (if not Impossible) it is to Bar the
 next *Heir* in the Right Line from the *Succession*.





To my Honoured Friend A. B.

S I R,



O U have been pleased (among far better choice) to consult a mean Man in a great Point now depending before you in Parliament, and agitated in every man's mouth; it is no less than, *Whether the Parliament of England may by their Act exclude and disable the next Heir of the Blood Royal from Succession to the Crown.* I know it hath been commonly discours'd, that the Statute of 13 *Eliz. cap. 1.* hath already settled this Point, and anticipated the Debate thereof, wherein it is Enacted, *That whosoever shall after the death of that Queen affirm, That the Parliament of England hath not full power to bind the Crown in point of Descent and Succession, shall forfeit his Goods and Chattels.* But, Sir, under favour this Law doth not in any wise affect either you or me, as this case is. It doth not affect you, because you being a Member of the Grand Council of the Nation, have thereupon a part and share in the Legislature, that is, in the making new, and abrogating of old Laws; and all men know, that Freedom and Liberty of Speech and Debate are the very Essence and Soul of all Councils. It doth not affect me, because this being a Point stirr'd in your House, and being also of that sublime nature and importance, it is but natural for any Member thereof freely to advise with his Friend about it with mutual security; for if it were Enacted even by Parliament, That no Member thereof should consult his Books or Friends about any Affair moved in either House; that Act would be null and void in it self, as being ridiculous and impertinent. And I am able to prove by irrefragable Records of Parliament which I have perus'd, That the Members of your House in ancient time have sometimes demurr'd to pass certain Bills of extraordinary nature, till they have conferr'd and advis'd with their Countries who had entrusted and chose them. And if the Question now before you be not of that nature, I know not what is. But because the Objection founded upon the said Statute of 13 *Eliz.* is one of the *Herculean* Arguments now in every man's mouth, and of which I observe some men are not a little fond, and lay a great part of their stress upon it, it shall not so easily escape my Animadversions; and therefore towards the close of this Discourse I hope you will find I have stab'd it into the fifth Rib: Onely I conceived it not altogether unreasonable to pinch this sturdy Objection a little in the beginning by way of Anticipation.

Sir, there is no *Englishman* hath a more profound Veneration and Deference for the public Sanctions and Establishments of my Countrey, than my self; I know well they contain the collective Wisdom and Providence of the Nation; they are in great measure the Ramparts and Sea-walls of the common Liberties and Propriety: They are (humanly speaking) the Fountains and Sources of all that is dear to our Souls and Bodies: but withall it is to be remembred, That God, Nature; and the immutable Customs of this Realm, have plac'd some things and matters above their Influence and Coercion. And we know that the Judges of the Common Law (to whom alone by a deep Polity the Construction and Superintendency of all Statute-Laws is intrusted) have in all Ages made bold sometimes to weigh the same Statute Laws in the Balance, and for certain Reasons appearing to them, have now and then (without deflowering their Consciences and Integrity) adjudged them null and void. Of this kind I shall produce some Instances in their proper place.

Neither is it to be forgotten that His Sacred Majesty (whose Concernment in the Fate and Event of this Question is not small) hath in several of his late Speeches, Printed and Published by his Special Command, admonish'd the Two Houses, *That they do not in any of their Bills Impeach the Right of the Succession, nor the Descent of the Crown in the true Line.* Upon this Foundation it is, together with that profound Duty which I owe to my Gracious Sovereign, and Love to my Countrey, (to say nothing of my particular respect to your self) that I have undertaken the following Discourse: In the which you will perceive I have laid before you my Sentiments and Notions with that freedom and assurance which becomes a faithful Advisor and Friend. And I should be sorry you should find any thing in the whole Discourse contrary to right Reason, or the Laws of *England*, or not munited with Authorities sacred and inviolable.

There is one thing I had almost forgot to tell you, (which yet perhaps may seem superfluous enough to your self, who knows me so well) which is, That I am an unworthy Member of the Church of *England*; I was Baptized in that Faith, and I design by God's grace to live and die in it. And (which doth not always happen) I know no Relation I have in the world of a contrary Persuasion. For my Principles, as they respect the State, I am for supporting the Monarchy of *England*, with those Regalities and Flowers with which the Laws of my Countrey have embellish'd and illustrated the Crown: and yet am, and shall upon all occasions appear, as Zealous in defence and vindication of the common Liberties and Property of my Countreymen, as any man whatsoever. And if I may mention it without too much ostentation or envy, my Relations were Fidele and Loyal to the Crown during our late Domestic Revolutions, the Tragical Marks whereof (I praise God) we have chearfully born in our Bodies and Estates.

Having thus premised these things, I shall now address my self to the Debate of the principal matter, wherein (Sir) I must all along so consider your Time and Patience, that I must much more consider the Dignity and Nature of the Argument and Subject Matter. And I doubt not (under favour) effectually to maintain and prove,

That the Parliament of England cannot by their Act exclude or disable the next Heir of Blood Royal from Succession to the Imperial Crown of this Nation.

This I shall make good by great and important Reasons and Authority drawn from the Laws of God, Nature, the Laws of *England* Common and Statute, the Canon and Civil Laws, Histories Ancient and Modern, and Records of Parliament, and other Courts; from which Foundations a Point of this nature and sublimity is to be decided.

1 Reason.

First then, I shall lay this down for a Ground: That the Succession to the Crown of *England*, by the Laws of God and Nature, is inseparably annexed to proximity and nextness of Blood: And then all Statute-Laws contrariant to the Laws of God and Nature are *ipso facto* null and void. So then I am here to prove two Things;

First, that the Succession to the Crown is inseparably annexed to Proximity of Blood by the Laws of God and Nature.

Secondly, that Statute Laws contrariant to those Laws are null and void. That the Succession of the Crown by the Laws of God is inseparably annexed to Proximity of Blood, appears plainly by that Statute Law (or Statute of Judgment, as it is there call'd) which God himself with his own mouth pronounced for the ordering the Descent of Honours and Possessions, *Numb. chap. 27.* which are there by his immediate direction to be conferr'd by Birthright and Propinquity of Blood, and not by the Election or Discretion either of *Moses* their Supreme Magistrate, or the Community of the People apart, or both in conjunction. And there (*Vers. 9. & 10.*) it is expressly enjoyn'd by the same Divine Authority, *That if a man have no Son or Daughter, his Inheritance shall descend upon his Brother.*

Gen. 4. 7.

The Preference likewise and Prerogative of Primogeniture in point of Dignities and Possessions, is of the same Divine Institution, as appeareth in several places of the Holy Scriptures. As where God said to *Cain* of his younger Brother

ther *Abel*. His desires shall be subject unto thee, and thou shalt rule over him. Again, where he forbiddeth^b the Father to disinherit the First-born of his double Portion, because by right of Birth it is due unto him. And lastly, where he maketh choice of the First-born^c to be sanctif'd and consecrated to himself.

Consonant hereunto are the Suffrages of the Fathers, and Doctors of the Civil or Imperial Law. *St. Hieron*^d writeth, *That a Kingdom is due unto the First-born*. *St. Chrysostome*^e saith, *The First-born is to be esteemed more Honourable than the rest*. *Bodine*, the great French Lawyer, tells us, *That it is not enough that the Kingdom go in Succession, but that it descend also upon the eldest issue Male, where he is next of the Blood, [sic enim Ordo non tantum Nature, & Divina Legis, sed etiam omnium ubique Gentium postulat.]* For so (saith he) not only the Law of God, and Nature, but also of all Nations doth require. And *Baldus*,^f (a famous Doctor of the Civil Law) saith, *[semper fuit, & semper erit, &c.]* Always it hath been, and always it shall be, That the First-born, and next of Blood, succeedeth in the Kingdom. Wherein he is followed with open Cry of all the choice Interpreters, both of the Canon and Civil Law; as namely, *Panormitanus*,^g *Hofstiensis*, *Corsetta*,^h *Alciat*,ⁱ and innumerable others.

Now what hath been said here of Primogeniture in Point of Succession to the Crown, is said likewise with equal consequence of proximity of Blood. For by the Civil Law, if a King have issue, five Sons, and the First-born die before the Succession fall, or if he being posses'd of the Kingdom die without Heirs of his Body, his right of Primogeniture devolveth unto the next in Blood; and if he dyeth in like manner, then unto the third; and so likewise to the next in Order. And herein *Albericus*^j (a famous Doctor) is most express in Point. And *Baldus* saith, *That Succession hath reference to the time of Death, and respecteth the Priority that is then extant*. And again, *He is not said the First-born in Law, who dyeth before the Fee openeth, but he who at that time is eldest in Life*.^k And of the same Opinion is *Alciat*; for as *Celsus* saith, *[primus is dicitur ante quem nemo sit]* He is first who hath none before him.

And herein the Common Law of this Nation accordeth with the Civil Law. And therefore the second Son of the King of England (after the Death of the First-born) is eldest Son within the Statute of 25 *Ed. 3.*^l where it is enacted, *That it shall be high Treason for a Man to compass the Death of the King's eldest Son, and Heir, &c.* So if the first Son dye in the Life time of the King his Father, the second Son forthwith becomes *Primogenitus*, or *First-born*, within the Charter of King *Edw. 3.* for the Duchy of *Cornwal*, as it was resolved^m in the case of Prince *Charles*, upon the Death of his eldest Brother Prince *Henry*.

By which it appeareth, that Proximity of Blood is ennobled with all the Prerogatives and Preferences of Primogeniture.

But leaving this way of arguing the Point, to be farther illustrated and pursued by the Church-men and Civilians; I shall for the most part derive my own Proofs thereof from the Authority of the Common and Statute-Laws of England, from Records of Parliament, and other Eruditions of that kind, as best sorting with my Person and Profession, and a Discourse of this nature.

First then it is most evident, That all the Human Acts and Powers in the World cannot hinder the Descent of the Crown upon the next Heir of the Blood, (I do agree they may hinder the possession, and enjoyment, and so they have often done by open Hostilities and Violence) but I say they cannot hinder the Descent. And the reason is plain, because this is a Dowry which the great King of Kings hath reserved to his own immediate Donation, and hath plac'd above the reach of a mortal Arm; and Mankind can no more hinder or intercept this Descent, than it can the Influences of the Stars, or the Heavens, upon the sublunary World, or beat down the Moon: And this (though perspicuous enough in it self) I shall farther prove anon in my last Reason of this Point, by irrefragable Authorities of the Common Law of England; and in my Answer to the second Objection. This being so, I shall add, That in the very moment of the Descent, the Person on whom it descends, by the Law of this Nation, becomes compleat and absolute King to all intents and purposes. And so it was expressly Resolv'd by all the Judges of England, 1^o *Jacobi*, *Watson* and *Clark's* * Case. And the same Person being

(b) Deut. 21.
17.
(c) Exod. 13.
1. 22. 9.
Num. 3. 12.
Luc. 2. 23.
(d) In Epist. ad
Onagr. Et in
Gen. 49.
(e) Hieron. 5. ad
versus Judaeos.
(f) De Repub.
lib. 6. cap. 9.
(g) Lex hoc D.
de Fust. &
Fure.
(h) Inc. licet de
voto.
(i) Trad. de Pet.
& Excell. Re-
glu. q. 9.
(k) In l. obve-
nire. D. de verb.
fig.
(l) In freem. D.
Sect. Dispositi.
Et in L. Dona-
tiones. C. de
Don. inter Vir.
& Ux.
(m) In L. 2. C.
de Fur. Emph.
(n) Per Lex
Jasta Sect. pen.
D. ad Treb.
(o) Conf. 275.
lib. 2.
(p) In L. proxi-
mus D. de Verb.
Sig.
(q) L. ex duo-
bus D. de Vulg.
& pup.
(r) Coke's 3d
Inst. 8.
(s) Jac. The
Case of the
Duchy of
Cornwal.

* Cited in
Coke's 7th
Rep. 10. v. 11.
4. Calvin's
case.

thus compleat and absolute King by the said Descent, I do then farther add, That the Ligeance and Fidelity of the Subject is due to that person by the immutable Law of Nature. And so it was solemnly adjudged by the Lord Chancellor, and all the Judges of *England*, in the Exchequer Chamber in the great Case of *Calvin*, 6 *Jacobi*, *Coke's 7th Rep.* 12. v. 13. a. &c. & 25. a. And herewith concurs the Principal Secretary, or *Amanuensis* of Nature, I mean *Aristotle*, who writes, (t) *Arist. Ethic. Nicomac.* Φύσει τε ὁ δὲ ἀρχαῖος πατὴρ ὁ ἄνθρωπος, καὶ βασιλεὺς τῶν ἀνθρώπων. By the Law of Nature the Father hath the Rule over his Children; and the King over his Subjects. And *Seneca* the Philosopher hath a saying not unlike, *Natura commenta est Regem.* Nature (saith he) did first find out a King.

(u) *De Clemen.*
lib. 1. cap. 19.
(x) 24 *H. 8.*
cap. 12.
34 *H. 8. cap. 1.*
23 *Eliz. cap. 1.*
&c.

And for this Reason it is, that our * Statute-Laws do so frequently stile the King our Natural Liege Lord, and the People, Natural Liege Subjects; And the Fidelity which the Subject owes to the Crown, Natural Obedience. And this more clearly appears in Indictments of Treason (which of all other Law Proceſs, are pen'd with the greatest Niceness and certainty.) And therefore in the Indictment of the Lord *Dacre* (upon the Northern Rellion) 26 *H. 8.* it is said, *Predictus Dominus Dacre debitum fidei, & Ligeantie sue quod prefat. Domino Regi Naturaliter, & de jure impendere debet, minime curans, &c.* The said Lord *Dacre* not regarding the Faith, which he did Naturally of Right owe to the King, &c. And *Reginald Poole* (a Cardinal of the Church of *Rome*) was Indicted 30^o *H. 8.* for committing Treason [*contra Dominum Regem supremum & Naturalem Dominum suum.*] Against the Lord the King, his Supreme and Natural Lord. And the constant form of the Indictments against the Persons lately executed for the Popish Plot, is, That they as false Traitors against the most Illustrious, most Serene, and most Excellent Prince *Charles* the Second, &c. their Supreme and Natural Lord; the cordial Love, and natural Obedience, which faithful Subjects should, and of right, ought to bear to our said Sovereign Lord the King, wholly withdrawing, did compass, &c.

And therefore as the Common Law is more worthy than the Statute, so the Law of Nature is more worthy than both.

So then, no Human Power can hinder the Descent upon the Right Heir of the Crown. The Descent makes the King, Allegiance is due to the King by the Law of Nature; the Law of Nature cannot be abrogated by Human Power; *ergo*, The right Heir of the Blood cannot be excluded by Parliament, which is a Human Power.

Secondly, It is evermore a certain Vestigue or Footstep of a Law founded in Nature, when a Thing displac'd is seldom or never in a State of Rest, until it be compos'd again in its own Native Centre, and Repository. For though all human and witten Laws may be worn out by Desuetude, and tacit Consent, yet the Institutions of Nature will never be abolish'd by the longest tracts, and courses of Time, but will always retain an *Animus revertendi*, and will certainly at length attain it. And of this kind is the Law of Succession to the Crown by the right Heir. For we find in the Stories of all Nations, as well Barbarous as Civil, and during Usurpations and Invasions upon the Crown, though countenanced even by public Establishments and Consent of the People, that those States notwithstanding have always continued under Convulsion, and Disease, like a Magnetick Needle, that never ceaseth to tremble and trepidate 'till it have found out its beloved North-Pole. And in such Case it hath constantly far'd with those Bodies Politic, as with a Body Natural upon a Dislocation of a principal Bone; they have breathed it may be, and moved a little, but still under Languors, and Anguish, and Feavorish Habits, and Dispositions, and never well till the Bone was set again, and reduced to its right place. I will rather choose to extract some short Instances of this kind out of the Memoirs of our own, than foreign Nations, (as being *Argumentum ad Hominum.*) And shall for brevity ascend no higher than the *Norman Conquest*. And the same same Instances shall be of Usurpations upon the Crown, countenanc'd by the Public Sanctions of this State,

The second *William*, and first *Henry*, usurp'd the Crown, and thereupon this Realm remain'd constantly under inquietude, and commotion, until the Death of *Robert* their elder Brother, and his Son *William*, without Issue, whereby the Right of the Crown centred in the said *Henry*.

The

The Usurpation of *Stephen* upon *Maud* the Empress (Daughter and Heir of the said *Henry*) was accompanied with Tragical Convulsions of this Nation, which never ceased till the Restauration of the right Heir, viz. *Henry* the second Son of the said *Maud*, in which *Henry* the *Saxon* Blood was likewise restor'd, his Grand-mother being next Heir of the Blood to *Edgar Atheling*.

Upon the Disinheriton of the House of *York* by that of *Lancaster*, this State sustain'd a Convulsion not to be parallell'd in all the Stories of the World. It is infinite to recount the Laniages, the Butcheries, the Rapines that were committed here: There were fought in this Island during this Tempest of War (as a Modern Author hath observed) 17 pitch'd Battels, and no less than 8 Kings and Princes of the Blood, 40 Dukes, Marqueesses, and Earls, besides Barons and Gentlemen innumerable, and 200000 of the Common People slaughter'd and destroy'd. And though this Combustion continued 60 years, (for so long it was from the Usurpation of *Henry* the Fourth, to the Expulsion of his Grandson *Henry* the Sixth) yet the Body Politic enjoyed little ease till it had purged out the Usurpers: like a Body Natural, that having received into the Stomach matter inimical and contrariant to Nature, is never at quiet till it have work'd out the same noxious and malignant matter by all the Passages of Evacuation, though to the manifest hazard or destruction of the Man himself.

The Usurpation of *Richard* the Third determined in his own death, and the Introduction of the right Heir some time after.

That of *Jane Grey* of the House of *Suffolk*, was but an Offer of Usurpation, as being a Quotidian Ague that lasted but nine days, which ended upon the Restitution of *Queen Mary*.

Lastly, It's a matter of fresh and bleeding sentiment and experience, what Agonies and Throws the *English* Nation sustained after that fatal and impious stroke given to King *Charles* the First, of ever Glorious Memory: Nature is wanting in adequate Metaphors and Similitudes to express so great a Calamity. This State was like the Demoniac in the Gospel; she was torn, worried, and shak'd together, and of this there was no intermission until the spirit was dispossessed, and His Gracious Majesty that now is (whom God long preserve) restor'd to that Crown which God, and Nature, and the immutable Customs of this Nation had given him.

So then it doth most evidently appear by these Instances, that the Succession of the Crown to the next of Blood is a Law eternal, and wrote with the immediate hand of God and Nature. And that although Nature may for some time be repell'd and kept off with the Forks and Instruments of Human Violence, that yet it will sooner or later ever more recur, and return with the greater swing and vigour. And that therefore a Dominion obtain'd by Usurpation is like a vast and pondrous Globe of Iron, supported in the Air by main strength of Arms, which upon removal or withdrawing of the same force by fatigue or imbecillity of the Bearers, will at length certainly attain its Centre of Gravity, and with the fall crush and confound the Supporters.

And where ever this eternal Law and Rule of Nature hath been impeached and violated, that hath evermore been done by the immediate and most visible act and finger of the Divinity it self, who is King of Kings, by whom they Reign, and that giveth the Kingdoms of men to whom he will, (as the holy Scriptures tell us.) And who being the Creator of Nature, can alone (when it pleaseth him) controul her Methods and Operations, as appeareth by the Interruptions of the Succession in the cases of ^a *David*, *Solomon*, ^c *Jehu*, and the like. And they that from these and other instances of this nature do fancy they may maintain the Lawfulness of impeaching the Succession of the Crown in the true Line, may as well infer, that they may lawfully rob and spoil their Neighbours, because God commanded the *Israelites* to spoil the ^d *Egyptians*. In those cases we are bound to the Law, but not to the Example.

(a) 1 Sam. 16. 1.

(c) 2 Kings 9. 4.

(d) Exod. 11. 2.

12. 37.

I come now to the Records of Parliament, which shall be three in number.

First, that of the 39 H. 6. ^e wherein the daring *Rich. Plantagenet* D. of *York*, by his Council exhibited to the Lords in full Parliam. a Writing, containing his Right and Claims to the Crowns of *England* and *France*. Against which Claim it was objected

(e) Rot. Parl.

39. Hen. 6.

Numb. 10. 13.

13. 27.

on

on the King's part, That the same Crowns had been entail'd by Act of Parliament upon the King's Grandfather King *Henry* the Fourth, and the Heirs of his Body, from whence the same King *Henry* the Sixth did lineally descend. *The which Act* (say the King's Friends there) *is of Autoritee to defeat enymannere Title made to eny person, (for so are the words.)* To which Objection the said Duke of York, answereth, (I shall cite the words of the Record as they are entered up in the old English) *That if King Henry the Fourth might have obtaigned and rejoyced the seyd Coronas of England and Fraunce by Title of Enheritaunce, Descent, or Succession, he neither needed nor would have desired, or made them to be graunted to him, in such wise as they be by the seyd Act. The which taketh noo place, neither is of eny force or effect against him, that is right Enheritor of the seyd Coronas; as it accordeth with God's Laws and all natural Laws, (saith the Roll.)* And this Answer of the Duke of York to the King's Title, and his said Claim, is afterwards by expresse Act of the same Parliament, declared and recognized to be good, true, just, lawful, and suffisaunt, (as it is there worded.) And at the same time for preventing Effusion of Bloud an Accord, by the free consent of the said Duke, is likewise established, That King *Henry* the Sixth shall during his Life enjoy the Crown; and that from thenceforth the Duke of York should be reputed Heir Apparent to the Crown.

(F) Rot. Parl.
1 Ed. 4. m. 8.
Co. 69 Ed. 4.
10. a. Bagot's
Affise.

The next Record is that of 1 Ed. 4. wherein after that Parliament hath in a long Pedigree disclos'd the Title of the same King *Edward* to the Crown, as being in a right Line descended from *Lionel* Duke of *Clarence*, third Son to King *Edward* the Third; and upon the death of his Father the above mentioned *Richard Plantagenet*, next Heir of the Bloud Royal, they immediately add these very words; *Knowing also certainly without doubt and ambiguity, that by God's Law and Law of Nature, he (i.e. King Edward the Fourth) and none other, is and ought to be true, right wys, and natural Leige and Sovereigne Lord. And that he was in right from the death of the seyd noble and famous Prince his Father, very just King of the same Realm of England.*

So here it is most expressly declared by two Parliaments of different Complexion and Interest, and therefore the more remarkable, that the Succession of the Crown of *England* is inseparably annexed to Proximity of Bloud by the Laws of God and Nature: And that a Title of this Sublimity and Grandeur is not at all impeachable even by Act of Parliament. And besides the said Parliament of 39 H. 6. doth make the same Declaration to the manifest prejudice of the Title of the King in possession, who was ordained also by the same Accord to reign over them during his Life, and whom for that reason it must be presum'd they would have favour'd, if they had found but the least colour so to have done.

1 Jac. 1.

The last Record is the Statute of Recognition made in the first year of King *James* by the whole Parliament, in which among other things, *They do in most humble and lowly manner (I shall all along use the very words of the Act) beseech His most Excellent Majesty, that as a Memorial to all Posterity, it might be publickly declar'd and enacted in the High Court of Parliament, That they being bound thereunto by the Laws of God and Man, did with unspeakable joy recognize and acknowledge, that immediately upon the Decease of Queen Elizabeth the Imperial Crown of the Realm of England, &c. did by inherent Birthright, and lawful and undoubted Succession, descend and come to His most Excellent Majesty, as being lineally, justly, and lawfully, next and sole Heir of the Bloud Royal of this Realm. And that by the Goodness of God Almighty, and lawful Right of Descent, His Majesty was King of England, &c. And to this Recognition we do (say they) most humbly and faithfully submit, and oblige our selves and posterities for ever, untill the last drop of our bloud be spent.*

(H) 6 Jac. Co.
7 Rep. 1. c. 3.
14.

And all the Judges of *England* some time after in the great Case of *Calvin* in the Exchequer Chamber do resolve, *That King James his Title to the Crown was founded upon the Law of Nature, viz. by inherent Birthright and Descent from the Bloud Royal of this Realm.*

So that this Parliament doth not in the least manner pretend to give any Title to King *James* or his Posterity by their own Act and Establishment, but on the contrary doth expressly recognize, that the same King's Right and Title to the Crown doth accrue to him by the Laws of God and Man onely, as the said Judges do by the Law of Nature, viz. as next and sole Heir of the Bloud Royal. By all which it

it doth most manifestly appear, That in the Opinion of the three several Parliaments, the Succession of the Crown is united to Proximity and Nextness of Blood, by the Laws Divine, Natural, and Human: And a threefold Cord of this Sanctimony, and Strength is not easily broken; to say nothing of the said Resolution of all the Judges of *England* in the Point, which (as our Books tell us) in matters of Law, is of the most sacred Authority next unto the Court of Parliament.

This being thus made out, I come now to prove, That Statute-Laws contrariant to the Laws of God and Nature, are *ipso facto* null and void.

And here I shall first observe, That by a profound Polity of our Law, the sole Power of expounding Statute-Laws, whether relating to Church or State, is intrusted and lodged in the Judges of the Common Law, as King *Charles* the first hath noted in his ¹ Speech to both Houses, upon passing the Bills of 3^o of his Reign. And as the Authorities of ² Law are very clear, now the Judges have exerted this constructive Power in expounding Statute-Laws, sometimes even null and void for certain Reasons to them appearing.

(i) Printed in Poulton's Statutes, 3 Car. 1.
(k) Coke's 1. Inst. 334. a.

As sometimes for Repugnancy, and Impertinence, and therefore where the Statute of *Carlile* enacted, That the Common Seal of the *Cistercian* and *Augustine* Monks should be in the Custody of the Abbot, and four others of the Convents; And that any Deed seal'd with the same Seal, not so kept, should be of no effect. This Statute was adjudged void ¹ for Repugnancy, because the Seal being in the Custody of the four, the Abbot could not Seal with it; and when it was in the hands of the Abbot, it was out of the Custody of the four. And so by this Statute, these two Orders could make no Deed valid in Law.

(l) 27 Hen. 6. Fitch Title Annuity 41.

Sometimes for Absurdity, as where the Statute of ^m *Edw. 6.* gives Chantryes to the King, saving to the Donors, and Founders, all Services, &c. This Act was adjudged void as to the Services. For it is absurd and contrary to Common Reason (saith the Book) that the King should hold of, or do Service to his Subjects.

(m) 1 Edw. 6. cap. 14.

14. *Eliz. Dyer* 3. 13. a. *Mich. 16 & 17 Eliz. &c. B. Strowd's* ⁿ Case.

(n) Cited in Coke's 8. Rep. 118. v. Dr. Bonham's Case.

Lastly, The Judges have expounded Statute-Laws void in themselves, when they are contrary to those of God and Nature; and they are bound to adjudge them so, when ever such Statute-Laws come before them; because the Laws of God and Nature are the Rays, and Emanations of the Divinity, they are eternal, indelible, immutable, and therefore cannot be altered, or Impeached by any human Power, or Authority, but only by the God of Nature it self, who did originally ordain them. And of this (because it is the principal Matter now in hand) I shall be the more plentiful in Instances.

And therefore if it should be enacted by Parliament, That no Man should honour the King, or love his Parents or Children, or give Alms to the Poor, or pay Tithes to the Parson of his Parish, or the like, these Acts are *ipso facto* void, because they are contrary to the expresse Divine Commands. *Dr. & Stud. lib. 1. cap. 6. 21 Hen. 7. 2. v.*

So where a Man was made Judge in his own Cause by Act of Parliament, This Act hath been adjudged void; because (say our Books) it is contrary to the Law of Nature, that one and the same Person should be Judge and Party. *Cokes 8 Rep. a. & v. Dr. Bonham's Case. Hobart's Rep. 87. Day. v. Savadge.*

So an Act of Parliament can never make the Grant of an Ideot or Lunatic good, for *Jura Naturæ sunt immutabilia* (saith the Book.) The Laws of Nature are immutable. *Hob. 224. Needler's Case.*

By the Statute of the 25 *Edw. 3. cap. 22.* a Man attainted in a *Premunire*, is by expresse words out of the Kings protection generally, and that it should be done with him as with an Enemy; by which words any Man might have slain him (as it is holden, 28 *Hen. 8. Title Crown Br. 197*) until the Statute of 5 *Eliz. 1.* yet the King may protect him, and pardon him. Because the Protection of the Sovereign to the Subject is due by the Law of Nature. *Coke's 7th Rep. 14. a. Calvin's Case.*

The Statute of 23 *Hen. 6. cap. 8.* and several other Statutes enact, That no Man shall be Sheriff of any County above one year; and that any Patent of the King to any person for a longer Term, though with an expresse Clause of *Non obstante*, shall be absolutely void, and of none effect; and the Patented perpetually

disabled to bear the Office. And yet notwithstanding it is resolved by all the Judges of *England*, That these Acts of Parliament are void. And that the King may by *non obstante*, constitute a Sherif for Years, Life, or Inheritance. And what is the Reason which the Judges give of this Resolution? Why because, say they, in exprefs words this Act of Parliament cannot bar the King of the Service of the Subject, which the immutable Law of Nature doth give unto him; for Obedience, and Ligeance of the Subject (add they) is due to the Sovereign by the Law of Nature. See 2 *Hen. 7. 6. v. Calvin's Case*, 14. *a.* in *Coke's 7th Rep.*

And thus upon the whole Matter of my first Reason, I have (as I conceive) effectually prov'd these two Propositions: First, That the Succession of the Crown of *England* is inseparably annexed to Proximity of Blood by the Laws of God and Nature. Secondly, That Statute-Laws contrariant to those of God and Nature, are *ipso facto* null and void. And from hence it doth necessarily follow, That the next Heir of the Blood Royal, cannot be barr'd from the Succession by Act of Parliament.

2 Reason.

(o) Preface to his fourth Rep. in principio.

(p) His Argument of the Case of the postnati. pag. 36.

Secondly; The Succession of the Crown to the next Heir of the Blood Royal, is a fundamental and primary Constitution of this Realm; and, indeed the *Basis*, and Foundation of all our Laws. Sir *Ed. Coke* says, *That the Kingdom of England is a Monarchy successive by inherent Birth-right, of all others, the most absolute and perfect form of Government, excluding Interregnums, and with it infinite inconveniences.* The Lord Chancellor *Egerton* tells us, *That in Cases of the Crown the Eldest, sole (or alone) is to be prefer'd.* And this he reckons among the ancient Customs of this Nation, *against which there never hath been (saith he) nor ought to be any Dispute.* And indeed if the Parliament may alter so essential and fundamental a Custom, or Constitution, then the Monarchy of *England*, which by the Law is, and ever since we were a Nation, hath been Hereditary, will immediately become Elective, and disposable at the Arbitrary, and Will of the People. And by the same reason, that they may exclude, and reprobate the next Heir, they may the next to that, and so by consequence the whole Line: For when Men have once transgress'd, and broken down the Boundaries which the Law hath set and prefix'd, the Progress is infinite, and there is no stop: And though the Common Law of *England* (which, as I have said, doth superintend all Statute-Laws) doth allow the Parliament to repair and amend, and improve the Building, yet it doth never allow them to pull it down, and subvert the Foundations thereof.

And it is some odds that such Electors may in time believe, that they have a Power to mar what they can so easily make, and that with good Conscience they may destroy (when they think fit) their own Creature, and Work of their own hands: And therefore those Kings of *England* who have submitted their Necks to this popular, or Statute-Kingship, (as I may call it) it is plain they came not in at the Door, but evermore at the Windows; and have been constrain'd, during their whole Reigns, to stand upon their Guards, and to defend their wrongful Possessions by Divine Right of the Sword, (as some in Raillery have call'd it) as well even against the People that chose them, as the Right Heirs. As I shall anon Demonstrate at large.

And this alteration of the Monarchy in so fundamental a part thereof, from Inheritance to Election, may prove equally mischievous also to a King in Possession, though he claim too by Inherent, and undoubted Birth-right; for the same Reason which the People may think sufficient to exclude the Right Heir, may (when they please) be deem'd valid enough also to depose, and eject the lawful Possessor of the Crown.

3 Reason.

Thirdly; No Person, or Community of Mankind, can give away, or transfer a thing, which they never had in them to give. And of this Nature is the Right of Succession to the Crown, which is not the Gift of Man, but the immediate Dowry of God, Nature, and the immutable Customs of the State. This may be prov'd by the Scriptures, Fathers, Councils, Canon, Civil, Common, and Statute-Laws, of which I shall give only a Taste. Fourthly;

Fourthly; The Succession of the Crown to the next Heir of the Bloud, is one of the highest, most essential, and undivided Rights of the Crown; and a Pearl of the most transcendent Oriency and Magnitude in the Imperial Diadem of *England*. And the Kings of *England* themselves, their Chancellors, Treasurers, and all other the great Officers of State, their Privy Counsellors, and the *Judges, (who are onely to expound all Statutes by which this Right of Succession may be violated) are all by provision of the Law solemnly sworn upon the Holy Evangelists, to maintain and defend the Rights of the Crown, and that they suffer no Disinheriton or Damage to accrue thereto. And every Member of the Commons House (who is to be a Party to the making these Laws of Reprobation) by the Statute of 5 Eliz. is obliged before he enter or have voice in the said House, to swear that he will to his power defend all Jurisdictions, Privileges, Preheminences, and Authorities united and annexed to the Imperial Crown of this Realm; and if he do not, he shall be deem'd no Member of that House, and shall receive also further Punishment. And the Oath at this day to be taken in the Court Leets all over the Kingdom, by every Subject above 12 years old, is, That he will be true and faithful to our Sovereign Lord King *Charles* the Second, and his Heirs, &c. And it is remarkable, that in the Parliament of 42 Ed. 3. the Lords and Commons being demanded their Advice by the King in a matter relating to the Crown, did answer with one voice, That they could not assent to any thing in Parliament, that tended to the Disinheriton of the King and his Heirs, or the Crown, whereunto they were sworn. And Sir *Edward Coke* (commenting upon that Record) saith, *That it is a Law and Custom of Parliament, That no King can alien the Crown from the right Heir, though by consent of the Lords and Commons.* And in another place he saith, *That King John's Resignation of the Crown to the Pope was utterly void: Because (saith he) the Royal Dignity is an Inherent inseparable to the Royal Bloud of the King, descendable to the next of Bloud of the King, and cannot be transferr'd to another: thus he.* And which is much more, the Parliament of 1 Jacobi do recognize, *That the Crown of England did descend upon King James by inherent Birthright, as being lineally, justly, and lawfully next and sole Heir of the Bloud Royal. And to this Recognition they do submit themselves and Posterities for ever, untill the last drop of their Bloud be spilt. And further do beseech His Majesty to accept of the same Recognition as the first fruits of their Loyalty and Faith, (not only) to His Majesty, (but also) and to his Royal Progeny and Posterity forever; (for so are the words.)* So here this Parliament do oblige themselves and Posterities (which we are) to defend and maintain the Succession of the Crown, not onely to King *James*, but also to his Royal Progeny, and that not in a general way to any of his Bloud, but onely to such Person to whom it shall be due by inherent Birthright and Proximity of Bloud, as (they recognize) it was to the same King *James*.

So then the Succession of the Crown to the next Heir of the Bloud, being a fundamental Right of the Crown, and a Right annexed and secured to the same Heir, not onely by the Laws Divine, Natural, and Humane, but also (as I have clearly proved) by the Obligation and Sanctimony of National, Lawful Recognitions and Oaths; it doth evidently follow, That the Parliament of *England* cannot by Law alter or violate the said Succession, contrary to the same National and Legal Recognitions and Oaths.

Lastly; The right Heir of the Crown cannot be barr'd or excluded by Act of Parliament: *Because the Accession and Descent of the Crown in an instant absolutely purgeth and dischargeth all Obstructions and Incapacities whatsoever, created by the same Act of Parliament.* And the reason given in our Books of Law is, *Because (say they) upon Descent of the Crown immediately a Body Politic is superadded to the Body Natural of the King's; and these two Bodies in an instant become Consolidate, Consubstantiate, and Indivisible in one and the same Royal Person; and thereupon the Body Politic, which is the more worthy and sublime Nature, and that is in no wise subject and obnoxious to the humane Imbecillities of Death, Infancy, Crime, or the like, draweth from the Natural Body all Imperfections and Incapacities whatsoever, and in a moment endows and ennobles the same Natural Body with*

*18 Ed. 3. The Oath of the Judges printed in Poulton.

5 Eliz. ca. 1.

(q) Co. 7 Rep. 6. v. Calvin's case.

(r) Rot. Parl. 42 Ed. 3. m. 7.

(s) 4 Inst. 14. in margine.

(t) 12 Rep. 28.

(v) 1 Fac. c. 1. A Recognition that the Crown of England is lawfully descended unto King James, his Progeny and Posterity.

the Divine Embellishments and Perfections of the Politic. As it hath been frequently resolved by the Judges of *England*, *Plowd. Com.* 238. v. *Lord Barkley's case*. *Et ibid.* 213. a. v. *the case of the Duchy of Lancaster*. *Coke's 7th Rep.* 10. a. *Calvin's case*. And in the same *Calvin's case*, 12. a. (a Case argued by the Lord Chancellor and all the Judges of *England*) it is affirmed, That the King's being a Body Politic is founded upon Necessity, and the deepest Politics and Wisdom of our Law. And why so? Because (saith that Case expressly) *Hereby the Attaindors and Disability of him that hath Right to the Crown are avoided, lest in the interim there should be an Interregnum, which the Law will not suffer.* This I shall now proceed to make good by two great and impregnable Instances, drawn out of our Books of Common Law, Histories, and Records.

*K. H. 6. Rot.
Parl. 1 Ed. 4.
num. 12, 22.*

The first is that of King *Henry* the Sixth, who being discomfited in Battel by King *Edward* the Fourth, was in the first of the same King *Edward* disabled from all Regiment, and attainted of High Treason by Act of Parliament. The said King *Henry* some years afterwards (by the assistance of the great Earl of *Warwick*) was restor'd again to the Crown, and held a Parliament. And the Judges of that time were all of opinion, That notwithstanding the Parliament of *Edward* had disabled *Henry* from all Government, and attainted him of Treason, that yet in the same moment that *Henry* reassumed the Crown, the said Parliamentary Incapacities were to all intents discharged and avoided. And yet *Henry* was at first but only King *de facto*, the true and legal Title abiding in the House of *York*: See to prove this *Brook Parl. pl.* 105. 1 *H. 7. 4. v.*

K. H. 7.

The second Instance is that of King *Henry* the Seventh. This King while he was Earl of *Richmond* (together with many Lords and Commons that took his part) were all attainted of High Treason by the Parliament of *Richard* the Third. Afterwards at the Battel of *Bosworth* the Earl obtain'd the Victory, and slew *Richard* in the Field, and on the same day assum'd the Crown upon him, and presently afterwards summon'd a Parliament.

On the first day of this Parliament (say our Books of Law and Histories) all the Judges of *England* were assembled in the Exchequer Chamber, to resolve a very rare and perplex'd Case, viz. What should be done about the reversal of the said Parliamentary Attaindors of the King, and divers Lords, and many Knights, Citizens, and Burgeffes, that were to sit in Parliament that day. And after mature Deliberation had among themselves, they all Resolved, That for all the Lords and Commons that were attainted, they advised them not to sit in Parliament till an Act of Parliament was passed by the other Lords and Commons not attainted, and assented to by the King, for the reversal of those Attaindors; and after the Reversal, then all of them to sit in the Houses: For that it was not convenient that any should sit as Judges in those Houses that were attainted. But concerning the King himself they universally Resolved, *That the Crown takes away all defects in Bloud and Incapacities by Parliament. And that from the time the King did assume the Crown the Fountain was cleared, and all the said Attaindors and Corruptions of Bloud, and other Impediments, absolutely discharged.* And yet the said King *Henry* the Seventh was only King *de facto* also, the legal Title (as I have before observed) abiding in the House of *York*. See to prove all this the Books of 1 *H. 7. v. Fitz. Parl. pl.* 2. *Brook P. & Statutes pl.* 37. & 105. *Plowden's Com.* 238. v. *Lord Barkley's case*, *Co.* 7. *Rep.* 12. a. *Calvin's case*. *Co.* 1 *Inst.* 16. a. *Jenk. centuries* 203. *Lord Bacon's Hist. H. 7. fol.* 13. All in expresse terms. And if the Influence and Operation of Law be so forcible and vigorous in Cases of colourable and specious Title only, (as that of the said King *Henry* the Seventh was, as I shall demonstrate at large in the sequel of this Discourse) how much more will it be where there is Proximity of Bloud and undoubted Right?

The last Instance is that of Queen *Elizabeth*, an Instance of fresh and recent memory. This Princess had been bastardiz'd and render'd incapable of Succession to the Crown by solemn Act of Parliament; and yet notwithstanding upon the Death of Queen *Mary* the said Queen *Elizabeth* succeeded to the Crown. And Sir *Nicholas Bacon* Lord Keeper of the Great Seal, and Oracle of the Law in that Age, and upon whom that Queen altogether relied in matter of Law, and who no doubt in a Case of that Importance had consulted all the Judges of *England*, was clear of opinion

28 H. 8. ca. 7.

Opinion, (saith *Cambden*) That there needed not any formal Repeal of the said *Vita Eliz. 44.* Act, as there never was any; because (saith the same Author) the Law of *no 2. r. 2. ni.* England had long before pronounced [*Coronam semel susceptam omnes omnino Defectus tollere*] That the Crown once obtain'd, doth absolutely wipe out all Defects whatsoever.

And in this Point the Civil Law agrees also with the Common Law of England; for *Ulpian*, a famous Doctor, tells us, That the possession of the Crown purgeth all Defects, and maketh good the Act of him in Authority, although he wanteth both Capacity and Right. *In Lib. Barthol. ricus D. de Offi. p. 1. 1.*

Moreover by the Laws of England the right Heir becomes absolute, and perfect King, in the very moment that the Crown descends upon him, though he happen to be at the same time in the remotest parts of the World, and before he be actually Crown'd. And therefore King *Edward* the first, though at the time of his Father's Death he was absent in the *Holy Land* in War against the *Infidels*, yet he was immediately acknowledg'd here by the whole Realm for their King. And in his return homewards did Homage to the *French King*, for the Lands which he held of him in *France*, and repress'd certain of his *Rebellious Subjects* in *Gascoign*, and yet he was not crown'd till almost two years afterwards. And the Case of his Sacred Majesty that now is, was very like, for he began his Reign from the moment of that fatal and impious Stroke, given to his Royal Father of ever glorious Memory, and yet his present Majesty was not at that time in England. And this is expressly resolved to be the Law of this Nation by all the Judges of England. *Mich. 1. Eliz. Dyer's Rep. 165. a.* *Walsingham in vita. Ed. 1.* *Dyer. 165. a.*

So King *Henry* the sixth, *Edward* the fourth, *Henry* the seventh, summon'd Parliaments, condemn'd Traitors, made Grants, and did all other Acts which a crowned King may do, before their several Coronations. And the like was done by King *Henry* the eighth, *Edward* the sixth, Queen *Mary*, Queen *Elizabeth*, King *James*, King *Charles* the first, and His Gracious Majesty that now is: For Coronation is but an Ornament, and Solemnization of the Royal Descent, but no part of the Title; and the Kings of England are to all Intents and Purposes compleat and perfect Kings before Coronation; and so it was expressly resolved by all the Judges of England, 1^o *Jacobi*^b, in the Cases of *Watson*, *Clarke*, and Sir *Walter Raleigh*, which in a matter so clear shall suffice. *(b) Coke's 715 Rep. 11. a. Post-nati.*

Having thus (as I conceive) made my Point good and impregnable, *Viz.* That the next Heir of the Blood cannot be excluded from the Succession by Act of Parliament. I come now to answer certain Objections, which some Men I perceive are fond of, and do not a little glory therein; and the most considerable of them are three in Number.

First, (say they) there are several Instances of Kings of this Realm, whose Titles to the Crown depended purely upon the Election of the People, and Acts of Parliament, and not upon Proximity of Blood, and Inherent Birth-right, as (to go no higher) the Titles of King *John*, *Henry* the fourth, *Henry* the seventh. Moreover *Henry* the eighth entail'd the Crown upon himself, and his Children, by Act of Parliament. And these Establishments by Parliament were look'd upon as good Titles to the Kings in Possession, and bars against the next Heirs. *1 Objection.*

I Answer, they were never look'd upon as good Titles to the Kings in Possession; or bars against the right Heirs, neither ought they to be deemed so, as doth most evidently appear by the former part of this Discourse. And which I shall now farther demonstrate by Enquiry into the Titles, and Circumstances of each particular King, mentioned in the Objection. *Answer.*

First for King *John*, it is plain he was King *de facto*, but not *de jure*, *King John.* for he invaded the Crown against the Right of his Nephew *Arthur* of Britain, (who was the Son of *Geoffrey*, *John's* Eldest Brother) as all the Histories of that time do observe and lament. And therefore wanting that Title which God, Nature, and the immutable Customs of this Realm give to the Right Heir, he was constrain'd to pray in Aid of the People, and to patch up a Title from them by Election. The

Vita Johannis,
fol. 197.

Story is this, (as I have extracted it out of *Matthew Paris*, a learned Monk, who lived in that time, and who became afterwards Chronologer Royal to King *Henry* the third, Son of the said King *John*.)

John (saith the Monk) upon the Death of his Brother King *Richard* the first, was advanced to the Throne by the favour and help of the great Ministers of State; and at his Coronation, in the presence of the Clergy, Nobility, and Populace, *Hubert*, Arch-bishop of *Canterbury*, and Chancellor of *England* (a Man of profound Subtilty and Reach) tells them all in a very fine Harangue, That no Man whatsoever was to succeed in the Kingdom here, upon any previous Reason, unless he were freely Elected by the universality of the People, with consideration had of his Moralities, and other personal Vertues, after the Example of *Saul's* Election; and then he added, That *John* was a well qualified Person in that kind, and that therefore they ought to choose him for their King. But when the said *Hubert* was afterwards demanded, why in so great an Assembly he durst broach so notorious a falsehood, viz. That the Monarchy of *England* was Elective; O, saith he, this I did out of certain Revelations and Prophecies that I have received, That *John* will at some time or other endanger the Realm, and bring all into confusion. [*Et ne haberet liberas habenas hoc faciendi, ipsum Electione, non Successione hereditaria eligi debere, affirmavi*; for so are the Historian's Words.] And that I might curb him with this Bridle from effecting these things, I did pronounce him admitted to the Crown by Election, not by hereditary Succession. So then we see here that the pronouncing the Monarchy of *England* to be Elective, was done only by way of Umbrage, and Dissimulation, and to serve a turn at a certain Crisis, and juncture of time. And the truth is, the People did accordingly afterwards check this unfortunate King with the same Bridle, and reduc'd him to a very low condition, and they chose *Lewis* (the *French* King's Son) their King. And this was the consequence of King *John's* Election by the People, and Invasion of the Right of his Nephew; which Tenure was good only so long as he could maintain it with his Sword; and so likewise is the Tenure of Pyrats, and Robbers, when they have ravish'd the Properties of other Men.

Henry 4.

Rot. Parl. 39.
H. 6. num. 10,
13, 15, 27.

Secondly; For King *Henry* the fourth, he was likewise King *de facto* only, and not *de jure*, for he laid violent hands upon the Crown, by the treasonable, and barbarous Deposition, and Murder of his natural Lord and Sovereign King *Richard* the second, after whose Death, without Issue, the legal Title remain'd in the House of *Clarence*, being the elder Line; and so King *Henry* the fourth was constrain'd to truckle under an Election by the People, and their Establishment in Parliament, which Establishment was *ipso facto* void and null in Law against the House of *York*, (which married afterwards with the said House of *Clarence*) as I have evidently proved by the Roll of Parliament of 39^o of *Henry* the sixth, recited by me at large here in the beginning of this Discourse. And indeed this very King *Henry* the fourth, well knowing how much a Title to the Crown by the Common Law, and Inherent Birth-right, exceeded a Title by Statute, and Suffrage of the People, made his solemn Claim to the Crown in Parliament by Descent from King *Henry* the third, which though it was the meekest figment and pretence that ever was, (as all the World knows) yet he thought he might with more security rely upon that (though fictitious) than popular Establishment, though real: The Story is considerable, and therefore I shall extract my Account thereof from the Roll of Parliament of that time.

Rot. Parl. 1 H.
4. mem. 20.

Forthwith (saith the Record) upon vacancy of the Realm by Deposition of King *Richard* the second, *Henry* Duke of *Lancaster* rising from his Seat, and standing up, so that he might be well seen by the People, and humbly crossing his Forehead and Breast, calling upon our Saviour's Cross, he claim'd and challeng'd the Realm of *England*, thus void; in his Mother-Tongue, under this very form of Words:

In the Name of Fader, Sonne, and Holy-Ghost, I Henry of Lancastre challenge this Rewme of Ynglonde, and the Crown, with all the Membres, and Appurtenances, als I that am descendit be Ryght Lyne of the Blood, comynge fro the gude Lord King Henry therde, and thorghe that right that God of his Grace hath sent

sent me, with helpe of my Kin, and of my frends to recover it, and which Reame was in poynt to be undone for default of governance, and unendoying of the gude Laws.

So we see here, that the Title he laid stress upon was, *Als descendit be right line of the bloud comynge fro the gude Lord King Henry Therde*; he meant from Edmund second Son of King Henry the Third, from whom the same Henry the Fourth by the Mother's side lineally derived, and who would fain have fac'd down the World, that the said Edmund was elder Brother to King Edward the First, contrary to his own knowledge, and that of all Mankind in that Age, and the expresse Testimony of ^a Matthew Paris, (who was Chronologer Royal to the said King Henry the Third at the time of the Birth of the said Edmund) and ^b Polydore Virgil, and all our Historians.

(a) Vita H. 3.
fol. 488. B

654.
(b) In fine Vita
H. 3. & principi-
pio H. 4.

Thirdly; For King Henry the Seventh, he was also King *de facto*, but not *de jure*, the legal Title abiding at that time in Elizabeth the eldest Daughter of King Edward the Fourth, with which Elizabeth the same King Henry did afterwards marry: Now because the Claim of the same King Henry the Seventh to the Crown is not generally understood, and it will conduce much to my present purpose to clear that matter, I shall crave leave here briefly to open it.

Henry 7.

It is to be known then that King Henry the Seventh laid claim to the Crown, as descending in a right line from John Duke of Somerset, eldest Son to John of Gaunt Duke of Lancaster, by his third Wife Katharine Swinford, by which Katharine the same John of Gaunt had Issue the said Duke of Somerset, and other Children, before Marriage with her; and during his Marriage with his second Wife the Lady Constance, Daughter and Heir of Peter King of Castile. So the said Children were plainly all Bastards by our Law, and by consequence not capable of inheriting any thing. After the death of his second Wife, John for the passionate affection which he bare to his Children by Katharine, married her; and some time after procured them by Act of Parliament to be legitimated, and made inheritable to all Preheminences, Honours, Dignities, &c. [*Exceptâ Regali Dignitate*, for so are the very words of the Record, *Excepting the Regal Dignity*.] Besides, Margaret Countess of Richmond and Derby, the Mother of King Henry the Seventh, (through whom he must necessarily derive what ever Title he could pretend to) died not till ^a 1 H. 8.

(c) Rot. Parl.
20. R. 2. num.
29. Rot. Parl.
20. R. 2. pars.
secunda mem. 6.
Rot. Parl. 8 H.
4. pars prima
mem. 14.

(d) L. Herbert
H. 8. fol. 8.

So then here are four plain Legal Impediments in the Title of King Henry the Seventh: 1. He derived from a Bastard Stem or Slip. 2. Though the said Children by Katharine Swinford were legitimated by Parliament, yet the Dignity Regal was excepted by the same Parliament, and they remained illegitimate as to that. 3. His Mother out-liv'd him. And 4. (which was worst of all) the onely true and legal Title remained in Elizabeth eldest Daughter to King Edward the Fourth, (who descended lineally from Lionel Duke of Clarence, John's elder Brother) with which Elizabeth the said Henry afterwards married, as I have observ'd. And therefore this Prince having so many palpable Flaws and Impediments in his Title, and well knowing that the Laws Divine, Natural, and Humane, were all against him; no man (I suppose) will wonder that he made his Courtship and Addresses to the People for their favour and good will, and was so sollicitous of an Establishment by them.

And as the most considering and thinking men of that Age had no great opinion of this Prince's Parliamentary Title, so it is plain that this King himself laid no great stress upon it; which is the more remarkable, because all our Historians do with one voice proclaim him one of the wisest and most sagacious Princes, that ever sway'd the Scepter in this Realm.

Now that he himself relied not upon this Statute-Kingship is most plain from two Acts of Parliament which I shall produce.

First, by that very Statute Law by which the Crown was establish'd upon him: for, as my Lord Bacon hath observ'd, he did not press to have that Act penn'd by way of Declaration or Recognition of Right, as on the other side he avoided to have it by new Law or Ordinance; but chose rather a kind of middle way, by way of Establishment, and that under covert and indifferent words, viz. *That the Inheritance of the Crown should rest, remain, and abide in the King, &c.* Which Words might equally be applied, That the Crown should continue to him, but whe-

Bacon. hist. 11.
12.

whether as having former right to it, (which was doubtful) or having it then in fact and possession, (which no man denied) was left fair to Interpretation every way.

11 H.7. cap.1.

Secondly, from that Act of Parliament which he procur'd to be made in the 11th. of his Reign, in which it was ordain'd, *That no person that shall serve the King for the time being* (for so are the very words) *in his Wars, shall therefore be attain'd or impeach'd in his Person or Estate, what fortune soever fall by chance in Battel against the mind and will of the same King for the time being.*

His History of
H.7. fol. 144.

Ib. fol. 233. C
217.

This Law (saith the Lord Chancellour Bacon, who comments very handsomly upon it) had in it parts of prudent and deep foresight, for it took away occasion for the people to busie themselves in prying into the King's Title to the Crown; for howsoever that fell out to be good or bad, the People's Safety was already provided for. And the same Author in the close of this King's Life, reckons his opportune and seasonable Death among his greatest Felicities, which withdrew him from any future blow of Fortune; which certainly (continues he) in regard of the Title of his Son, being then 18 years of Age, and a bold Prince, had not been impossible to have come upon him: Because upon the decease of King Henry's Queen, in whom (as I have often said) the true Title lodged, and who died some years before, the Crown immediately by the Law of England descended upon Prince Henry; for there can be no Tenancy by the Courtesie of the Crown. So then in the Opinion of the said Lord Chancellour also this King's Title by Statute was of small account in respect of that of his Son by Common Law. By all which it plainly appears, that this King had no legal or inherent Right of his own to the Crown; and therefore full contrary to his own inclination he was constrain'd to stoop and truckle under an Establishment of the People, which notwithstanding was invalid and null in Law, as I have proved.

Henry 8.

For King Henry the Eighth, though no man ever doubted but that he was King *de jure*, as bearing (united in his own individual Person) his Father's pretended Title of *Lancaster*, and his Mother's legal and undoubted one of *York*; yet there happened to fall out in this Prince's Case certain anomolous and odd Circumstances, and Niceties, and secret Intrigues, which necessitated him (contrary to his better knowledge and the native greatness of his Soul) to allow his People a share or co-partnership (as I may say) in the ordering the Succession of the Crown, that so the matter might go as far as Human Power could carry it.

25 H.8. c. 22.

And therefore first by the Statute of 25 he confirms his Divorce from *Katharine*, and bastardizeth *Mary* her Daughter; and on the other hand corroborates his Marriage with *Anne*, and legitimates *Elizabeth* her Daughter, and makes her inheritable to the Crown. The Legitimation or Bastardy of these two Daughters depending much upon the validity or weakness of the Papal Dispensation in the first Marriage; and this point being a *Vexata Questio* in those days, he had hoped to have cut this *Gordian Knot* (which he could not untie) with the Sword and pretended Omnipotency of a Parliament. And then after he had done this, he forthwith marries *Jane Seymour*, and by the Statute of the 28 attaints his Wife *Anne*, and bastardizeth *Elizabeth* her Daughter; and so then (according to the Poet)

Qui color albus erat nunc est contrarius albo.

28 H.8. cap 7.

And then breaking down the Boundaries of all Law and common Reason, and with a prodigious wildness and extravagancy he procures it to be Enacted, *That in case he had no Issue by Jane, he might dispose of the Crown to whatsoever Person he did in his own discretion think fit.* And the whole Nation was oblig'd by the Sanctimony of an Oath to the defence of this Law. This he did that he might advance to the Throne his Natural Son *Henry Fitz Roy Duke of Richmond*, whom he loved most passionately, (who yet died not long after) and so to exclude for ever his Sister *Margaret of Scotland*, and all her Descendents.

Eeylin's Eccle-
sia rest. mat. 1.
fol. 5.

35 H.8. cap. 1.

Then by the Statute of 35 he entails the Crown upon himself, Prince *Edward*, and the said *Mary* and *Elizabeth*; and in case they happened to have no Issues of their Bodies, then he was again impower'd by the same Act of Parliament to dispose of the Crown to what person or persons soever he pleased by his last Will and Testament. And the whole Nation was likewise sworn to the Maintinance of this Law. And by virtue of this extravagant Power (in case his three Children died with-

without Issue, as afterwards they did) he bequeathed the Crown to the House of *Suffolk*, being the younger House, and in defiance of all Laws, and Brotherly Affection disinherited, and totally excluded the elder House of *Scotland*: And therefore all those Niceties, and Designs considered, it is most plain King *Henry* was constrain'd to pray in Aid of the People, to give some Colour at leastwise to all the Contradictions and Impossibilities. And therefore, I conceive that no Man of common Reason, or that bears true Faith and Allegiance to His Majesty that now is, or his Crown, will draw Arguments from the three Statutes above mentioned, to prove that the Parliament of *England* may exclude the next Heir of the Blood.

So that upon the whole matter of this first Objection, it appears most plainly, That the Princes which submitted and stoop'd to these tumultuous and Statute-Kingships, either it was because they invaded and usurp'd the Crown contrary to the Laws Divine, Natural, and Humane, or to give a colour and varnish to Contradictions, and Impossibilities, and private Intrigues and Designs. And yet after all these popular Establishments, though munit, and fenc'd about with the highest Penalties and Oaths that mortal Men could devise; yet could not in reality transfer the Right from the next Heir of the Blood (that being a Dowry, as I have said, which God reserves to his own immediate Donation, and hath plac'd above the reach of a mortal Arm.) For though an Act of Parliament shall command me to say, That an *Ethiopian* is White, and that under the highest Oaths and Penalties; or, That an Ape is a Man; yet notwithstanding the *Ethiopian* can never in truth change his Skin, or Complexion, nor the Ape his Species, and commence a Creature rational.

Ay; but (saith another) Why may not the Crown be transfer'd from the next Heir of the Blood by Parliament, as well as all other Inheritances, and Possessions whatsoever in the Kingdom may, from the Right Heir of the Subject? 2 Objection.

I Answer there is no similitude between the Cases. For; 1. Private Men Answer. derive their Inheritances from their Ancestors; but the next Heir of the Blood Royal derives not the Crown from his Predecessor, or the People, but immediately from God, as I have prov'd at large in this Discourse. And no Person, or Community can give away, or transfer a Thing, which they never had vested Nil dat quod non habet. in them, either in Possession, or so much as Right.

Secondly; The Law of the Crown (which yet is a principal part of the Common Law of *England*) differs from the Law of the Subject in Point of Descents; 1. Inst. 11. v. 344. a. and therefore that may be Law in case of the Crown, which is not in case of the Subject, of which I shall here give some Instances.

A Private Man being an Alien Born, cannot by our Law inherit Land here, but the Crown shall descend upon the next Heir of the Blood, though an Alien; as it happened many years ago, in the case of King *Henry* the second, who was an Alien born, and begot of a Father who was also an Alien: And the like happened not long since in the case of King *James*, of ever blessed Memory.

If a King of *England* have three Daughters, and dye, the Crown shall descend upon the Eldest alone; but in case of a Subject, the Inheritance shall go to all three Daughters. *Co. 1 Inst. 165. a. 25 H. 8. cap. 22. circa medium.*

If a Subject marry an Heiress, and hath Issue by her, a Son, and the Wife dye, the Husband shall enjoy the Wife's Lands during his Life; but if a Man marry a Queen Regnant of *England*, and hath Issue by her a Son or a Daughter, and then she dyes, here the Crown descends immediately upon the Issue, which becomes King or Queen presently, though the Father be alive; as ought to have been in the Case of King *Henry* the Seventh, and his Son Prince *Henry*, (as I have before observed;) and would have been in the Case of *Philip* that married Queen *Mary*, if she had dyed having Issue. *Ellesmere's Postnati* 36. Lord *Bacon's H. 7. fol. 4. 121, 217, 231.*

So the half Blood is no Impediment to the Descent of the Lands of the Crown, as it happened in the Cases of *Edward* the Sixth, and the two Queens E. Mary

Mary and Elizabeth; and yet in the Cases of Subjects it is clearly otherwise. *Plowd. Com. 245. a. Co. 7. Rep. 12. v. Postnati. Co. Inst. 15. v.*

So likewise if the Right Heir of the Blood, or the Father or Mother of the Right Heir from whom the Crown descends, are attainted of High Treason by Parliament, these Attainders yet are no Obstructions to the Descent of the Crown, as it happened in the Cases of our King *Edward* the Fourth, and his Father *Richard Plantagenet*, Duke of *York*, who were both attainted of High Treason by Act of Parliament. As also in the Case of King *James*, as it

Cambd. vita Eliz. Reg. 28. 1586.
Item eodem die (scilicet Cambden)
in quo sententia in Scotorum Re-
ginam prolata est, a Delegatis
Regni Judicibus declaratum erat,
Sententiam illam nihil derogare
Jacobo Regi Scotorum in Jure aut
Honore; sed illum in eodem esse
Loco, Ordine, & Jure, ac si
Sententia illa nunquam lata fuisset.
 (For so are the very Words of the Historian.)

is related to his Mother *Mary* Queen of *Scots*, who was attainted of High Treason, and executed, and yet the Commissioners and Judges that gave Sentence upon her, set forth a public Declaration, That the Attainder of the Mother did not at all derogate from the Right of her Son to the Crown of *England*: But all Men know 'tis otherwise in the Case of Subjects, whose Descents are obstructed by the Attainders of their Ancestors.

I could be infinite in Cases of this Nature, but by these few Instances (wherein the Law, for ought I know, is no more alterable by Parliament than the Succession) it doth plainly appear, That there is no small difference in Point of Law, between the Descents of the Crown, and Private Inheritances. And therefore, though an Inheritance may thus be given away from a Subject, yet it doth not in any wise follow that the Crown may be dispos'd from the next Heir.

3 Objection. The third, and last Objection is founded upon the Statute of *13^o Eliz. cap. 1.* wherein it is enacted, *That if any Person shall affirm, That the Parliament of England hath not full Power to bind, and govern the Crown in Point of Succession and Descent, that such Person (during the Queen's life) shall be guilty of High Treason, and after her Death, shall forfeit his Goods and Chattels, &c.*

Answer.

1 Eliz. cap. 2. I Answer; First, it is to be observed, That this Law was made in the time of a Queen, whose Title to the Crown depended upon Statute-Law, as appears by the very Act recognizing her Title to the Crown; and this Act of *13^o* was made in affirmance and vindication of such Title to the Crown by Statute; and this is plain from the Body of the same Act, wherein it is expressly Enacted, That if any Person shall affirm, That any Statute for recognizing the Right of the Crown of *England* to be lawful in the Royal Person of the said Queen, is not, or ought not to be for ever of sufficient force to bind all Persons, and their Rights, that in any wise may, or might claim an Interest to the same Crown in Possession, or otherwise, shall, during the Life of the Queen's Majesty, be judged a High Traitor; and therefore the same Queen had little reason to scruple the passing a Bill of this Nature. But I much doubt, whether a Common Law-Prince (who owes his Title only to God, Nature, and the immutable Customs of the Nation) unless under like Circumstances with King *Henry* the Eighth, would have assented to an Act, so derogatory to the Regalties; for the manifest Inconveniencies that might insue to himself, and posterity, by such Assent and Condescension: Some of which I have discovered in the beginning of this Discourse in my second Reason, why the Succession of the Crown is annexed to Proximity of Blood.

1 Inst. 43. a.
4 Inst. 52. Secondly; Wise men do not only consider Things that are acted, but more especially the Season and Junctures of Time, when those things were acted; and Sir *Edward Coke* (a great Master in the Science of our Law) doth frequently admonish us, That the true Scope and Design of our Statute-Laws, are oftentimes not at all intelligible, without the help of the Chronicles and Memoirs of that Age, wherein the said Statute-Laws were made. Of which there cannot be a more pregnant Instance than this here. And therefore I will in Charity believe, That the Contrivers of this Objection did never rightly inform themselves of the History, and true Reason of making this Statute, which in Truth was this:

Cambden. Vita Eliz. Some time before this Statute, *Mary* Queen of *Scots* (Dowager of *France*, and the Mother of our King *James*) being discomfited in Battel by her own rebellious Vassals of *Scotland*, she (like a Dove pursued by Vultures) fled into the

the bosom of her Kinswoman *Elizabeth* of *England* for Protection. *Elizabeth* (who inherited her Father's Malaversion to the House of *Scotland*, and contrary to those Royal Sympathies which one Sovereign Prince ought to have for another in Distress; and indeed against the Rules of common Hospitality) commits *Mary* to a loathsome Prison. The Pope, with some of the Catholick Princes, and others of her Friends, thought this was no very kind Treatment, and therefore endeavour not onely to set her at liberty, but also to advance her to the Throne; the generality of Mankind in that Age looking upon the said *Mary's* Title to be much clearer than that of the Queen in possession, the later being bastardiz'd, and render'd incapable of the Crown by solemn Act of Parliament, which still stood unrepeal'd, and therefore valid in Law; at leastwise but a Statute-Queen, as I prov'd before: And the former deriving (as is shew'd above) by the Common Law, and a direct true line from *Margaret* the eldest Daughter of King *Henry* the Seventh, and *Elizabeth* his Queen. And besides, in the very year this Statute was made, there was a Marriage warmly prosecuted between the said Queen *Elizabeth*, and *Henry* Duke of *Anjou*, (who afterwards became King of *France*, upon the death of his Brother *Charles* the Ninth;) and no small care was then taken for Establishment of the Succession upon the Issues proceeding from the same Marriage. And there is a remarkable Clause among others in the same Statute of 13, viz. *That every person or persons, of what Degree and Nation soever they be, shall during the Queen's Life declare or publish, that they have any right to enjoy the Crown of England, during the Queen's Life, shall be disabled to enjoy the Crown in Succession, Inheritance, or otherwise, after the Queen's Death.* Which Clause was most apparently contriv'd against the same *Mary* and her Son King *James*.

28 H.8. cap. 7.

Cambden in
13 Eliz.

So that the plain scope and design of this Statute was, utterly and for ever to exclude and disinherit the same *Mary* Queen of *Scots*, and all her Posterity, and to extinguish absolutely that Right to the *English* Crown, which the Laws of God and Nature, and the Common Law of *England*, had given to her and them. And therefore how any man that pretends Loyalty or Allegiance to His Gracious Majesty that now is, (who derives his Title lineally from the said *Mary* Queen of *Scots*) can object this Statute was a Precedent for Exclusion of the next Heir by Act of Parliament, I cannot understand. And the Objector may do well to consider, how far he may enforce this Objection without hazard to his Person and Estate; for no man can maintain the validity of this Statute, without manifest Derogation and Injury unto his Majesty's Title.

Thirdly; To affirm that the Parliament hath no Power to bind the Succession of the Crown in point of Descent; and to affirm that the Parliament hath no power to exclude the next Heir of the Bloud Royal, is the same Proposition. Now I have proved above, That the Succession of the Crown is annex'd to Proximity of Bloud by the Laws of God and Nature, and that Acts of Parliament contrariant to those Laws are void. So then the Case is no more than this; An Act of Parliament ordains, that no Person under a certain Penalty shall dare to affirm, That Statute-Laws contrary to those of God and Nature are null and void; I think no man ever did, or doth, or will doubt, but that such Act of Parliament is absolutely void in it self, and that the Judges are oblig'd to expound it so, when ever it comes before them in Point of Judgment.

Lastly; This Act of 13 being a Law made (as I have proved above) in diminution, or rather in open and hostile Defiance of the Title of *Scotland* to this Crown, it was by tacit and implied consent of the Law, and the whole Nation, utterly abrogated upon the first moment of the happy Union of the two Crowns in the person of King *James*; or at leastwise by the solemn and exprefs Repeal here of all hostile and unkind Laws between *England* and *Scotland*, of which I am sure this of 13 was none of the least.

4 Jac. cap. 1.

I shall draw towards a Conclusion with a certain apposite Note, which one of our *Latin* Historians makes upon the nine days Reign of *Jane Grey*, and the easie Admission of Queen *Mary* to the Crown.

Rerum Angli-
carum Annales
lib. 3. Via
Maria R.

Tali & constanti veneratione nos Angli legitimos Reges prosequimur, ut ab eorum debito obsequio, &c. Such and so constant a Veneration (saith he) have we *Englishmen* for our lawful Princes, that we are not to be drawn from our Allegiance and Loy-

Loy-

Loyalty to them, by any colours or specious pretences whatsoever, no not with the Bait even of Religion it self; of which matter this Case of *Jane* may be a memorable and plain Instance: For though the Foundations of her Government were laid as firm as was possible, and the Superstructure also wrought with all the Art and Cunning in the world; yet as soon as ever the lawful and undoubted Heir of the Crown appear'd, and shew'd her self to the People, all this fine and curious Frame presently fell to the ground, and was ruin'd as it were in the twinkle of an Eye; and that principally by the hands and industry of those very persons, who upon the account of Religion were thought to have most favoured the Interest of *Jane*. And though the Duke of *Northumberland* (*Jane's* Father in Law, and a man of prodigious Subtilty) had instructed the Preachers of *London* to cry down the Title, and blacken the person of *Mary* in their Pulpits by all the ways imaginable; yet this Device was smok'd, and would not take even with the *Londoners* themselves; no though *Ridley* their Bishop (a man of singular Sanctity and Persuasion, and whose Person they passionately revered) laboured in the matter with all his Might, &c. So far the Historian.

Thus I have (as I conceive) answer'd all material Objections, and have likewise made good my Proposition, viz. *That the Parliament of England cannot by the Laws of England exclude the next Heir of the Blood from Succession to the Crown.* And I doubt not His Sacred Majesty that now is, will not in his time suffer a Pearl of this Magnitude and Oriency to be ravish'd by any Hands out of the Imperial Diadem of this Realm.

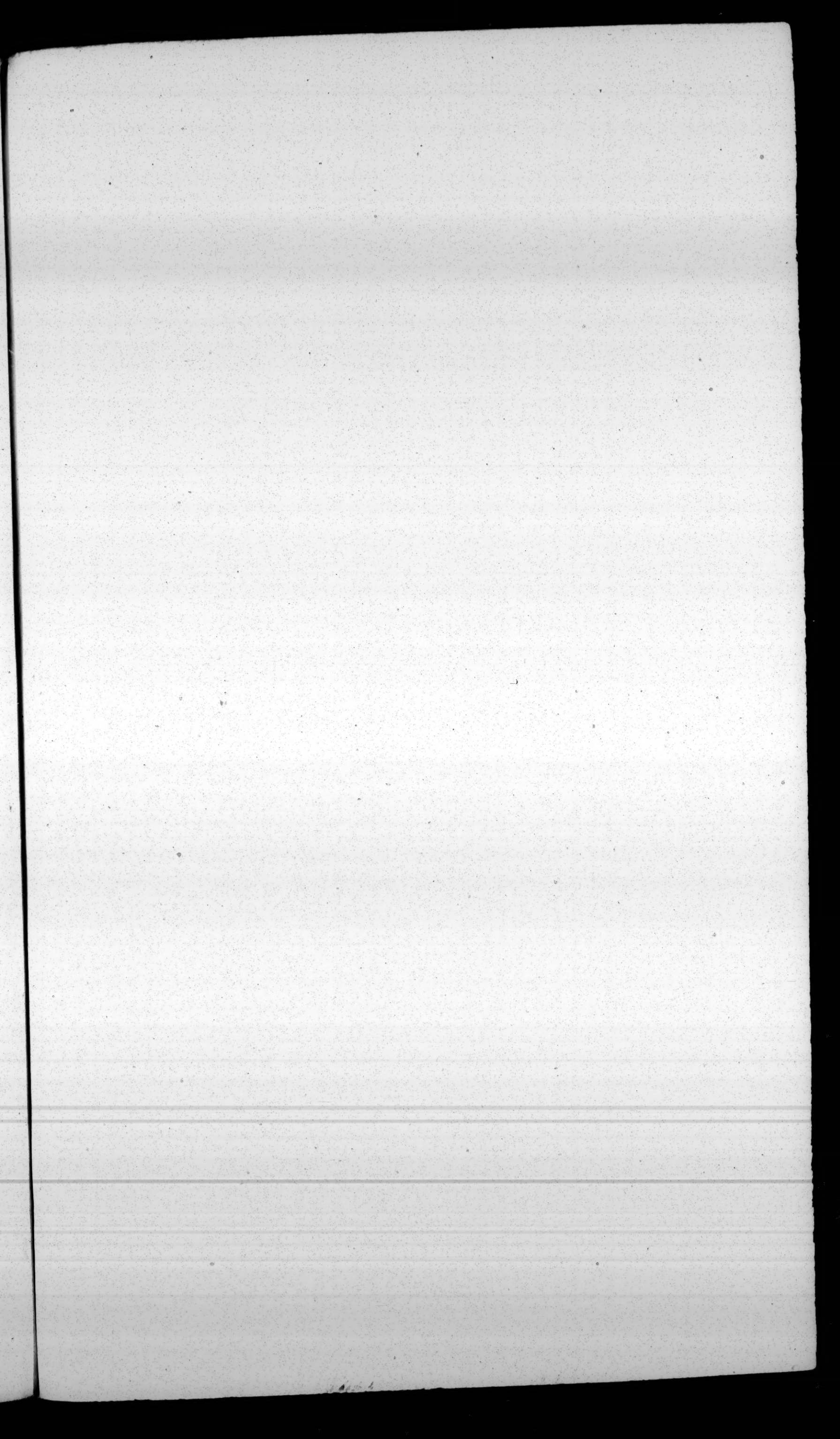
Sir, I doubt not but upon a serious and deliberate Perusal of this Discourse (which I have compos'd at your earnest Intreaty) you will gather some Notices and Knowledge which may be of use and satisfaction to you. Whatever it be, I beseech you to believe that I am,

S I R,

Your Faithful and Humble Servant,

E. F.

F I N I S.



T Here is lately published by the Judicious William Petyt of the Inner Temple Esquire, a *Learned Treatise*, Entituled, The Ancient Right of the Commons of ENGLAND asserted: or, A Discourse proving by Records, and the best Historians, That the COMMONS of ENGLAND were ever an Essential part of Parliament.
